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November 12, 1998

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation**
Direct Broadcast Satellite Public Service Obligations
MM Docket No. 93-25

Dear Ms. Salas:

This is to provide notice that Ms. Midge Pierce, Vice President of Programming for WAM! America's Kidz Network, Encore Media Group LLC, submitted written *ex parte* presentations on November 10 to Chairman Kennard and to each of the Commissioners, with copies to their respective legal advisors. Two copies of the form of letter (which was identical except for the addressee) and its exhibits are submitted to you for inclusion in the record in this proceeding.

If you have any questions regarding the above information, please contact the undersigned.

Very truly yours,

Robert Hoegle

Robert L. Hoegle

RLH:ssm
Enclosures

Kids love it.

Teachers need it.

Parents trust it.

November 10, 1998

BY HAND

William E. Kennard, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Direct Broadcast Satellite Public Service Obligations
MM Docket No. **93-25**

Dear Chairman Kennard:

Encore Media Group LLC ("Encore") writes to you regarding a matter of the utmost importance and, hopefully, to America's children and their parents. Recognizing that you already have heard and read much in the DBS Public Service Obligations proceeding, Encore hopes that you can take a few more minutes and consider the impact of the Commission's rules upon WAM! America's Kidz Network, the only full-time noncommercial educational network devoted to children from 8-16 years old. There can be no dispute that these adolescent viewers are underserved when it comes to educational programming.

Encore has participated in this proceeding from the beginning -- even before the launch of WAM! four years ago. We have not sought regulatory advantage, but rather an opportunity to compete for carriage. We write to you now because we fear that the nature of WAM! and its programming is being "lost in the shuffle" as the legal nuances of statutory languages are debated.

Encore Media Corporation 5445 DTC Parkway, Suite 600 Englewood, CO 80111 **Tel 303-771-7700** Fax 303-741-3067

WAM! -- Noncommercial Educational Programming

WAM! is noncommercial educational programming of the highest quality. It is undoubtedly the very kind of programming which Congress sought to make available through Section 25 of the Cable Act. We have no commercials, no product sponsors, and no product tie-ins. Instead of commercials, we program shorts such as, for example, "WAM! tips" in which real children pass along study tips to peers.

From its inception, WAM! has sought to program education that entertains and entertainment that educates. During its educational day-part, WAM! provides subject-specific educational programs. For example, children can learn math through "The Eddie Files." Who would have thought that children could learn fractions through slicing a pizza -- Eddie explains how. If you have any doubt that WAM! is a noncommercial educational programming service, please take a moment to flip through the Lesson Plans attached as Exhibit A.

The Problem and Solution

As the Commission has learned in several rulemakings and WAM! in enumerable affiliate sales calls, channel capacity is limited. Consequently, if DBS operators must set aside 4% of their channel capacity (6 of 150 channels)for noncommercial educational programming, that kind of programming must qualify for carriage on those channels. Regardless of programming content or quality, DBS operators will carry only a limited number of noncommercial educational channels. Rules which disqualify WAM! for carriage under Section 25 are likely to preclude DBS distribution of WAM!.

Although the focus of Section 25 is on the carriage of "noncommercial programming of an educational or informational nature," we understand that the Commission is considering a requirement that such programming also be provided by a nonprofit entity. Because Encore is a for-profit company, WAM! would be excluded from carriage under Section 25. This approach would eliminate any need to examine content, but it confuses the concepts of noncommercial and nonprofit to the detriment of viewers. In an August 21, 1997 letter to Ari Fitzgerald (attached as Exhibit B), Encore provided an analysis of the statutory language demonstrating that noncommercial educational programming packaged by a for profit entity should qualify for carriage under Section 25. In response to recent questions regarding the meaning of the Time Warner decision, Encore has prepared a further summary of the importance of commercial-free programming in the noncommercial programming equation. See Exhibit C.

Alternatively, Encore believes that WAM! should qualify as noncommercial educational programming under Section 25 because approximately 30% of WAM!'s programming is produced by nonprofit entities, and that percentage is growing. A list of WAM! programming produced by such nonprofit entities is attached as Exhibit D. Such programming is and remains noncommercial regardless of the packager. A for-profit packager that does not insert commercials does not change the nature of the underlying programming. Thus, Encore respectfully requests that where a substantial amount of programming on a commercial-free educational programming service is sourced from nonprofit entities, that service should qualify as "noncommercial educational programming" under Section 25 even if the packager is a for-profit entity.

* * *

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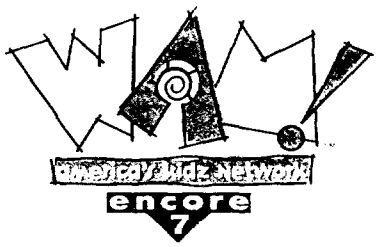
Very truly yours,

Midge Pierce CPB

Midge Pierce
Vice President of Programming
for WAM! America's Kidz Network

MP:vaa
Enclosures
cc: Mr. Ari Fitzgerald (w/encl.)



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November 10, 1998

BY HAND

Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Direct Broadcast Satellite Public Service Obligations
MM Docket No. **93-25**

Dear Commissioner Ness:

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Very truly yours,

Midge Pierce
Vice President of Programming
for WAM! America's Kidz Network

MP:vaa
Enclosures
cc: Ms. Anita Wallgren (w/encl.)

Kids love it.

Teachers need it.

Parents trust it.

November 10, 1998

BY HAND

Gloria Tristani, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Direct Broadcast Satellite Public Service Obligations
MM Docket No. 93-25

Dear Commissioner Tristani:

Encore Media Group LLC ("Encore") writes to you regarding a matter of the utmost importance and, hopefully, to America's children and their parents. Recognizing that you already have heard and read much in the DBS Public Service Obligations proceeding, Encore hopes that you can take a few more minutes and consider the impact of the Commission's rules upon WAM! America's Kidz Network, the only full-time noncommercial educational network devoted to children from 8-16 years old. There can be no dispute that these adolescent viewers are underserved when it comes to educational programming.

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Encore Media Corporation 5445 DTC Parkway, Suite 600 [illegible] 303 771-7700 Fax [illegible]

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Very truly yours,

Midge Pierce
Vice President of Programming
for WAM! America's Kidz Network

MP:vaa
Enclosures
cc: Mr. Rick Chessen (w/encl.)

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Teachers need it.

Parents trust it.

November 10, 1998

BY HAND

Michael K. Powell, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Direct Broadcast Satellite Public Service Obligations
MM Docket No. 93-25

Dear Commissioner Powell:

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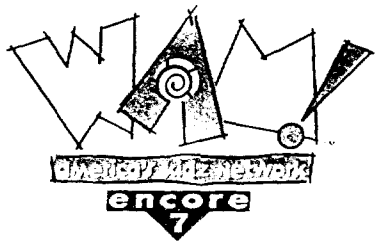
Midge Pierce CSB

Midge Pierce
Vice President of Programming
for WAM! America's Kidz Network

MP:vaa
Enclosures
cc: Ms. Jane E. Mago (w/encl.)



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November 10, 1998

BY HAND

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Direct Broadcast Satellite Public Service Obligations
MM Docket No. **93-25**

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Midge Pierce CPB

Midge Pierce
Vice President of Programming
for WAM! America's Kidz Network

MP:vaa
Enclosures
cc: Ms. Helgi C. Walker (w/encl.)

Exhibit A

America's kidz Network

an encore network

Lesson Plan For We Are The Children

Program Name: We Are The Children
Run Time: 36 episodes / 30 minutes
Curricular Area: Social Studies
Recommended Grade Level: 4 - 8

Synopsis:

This program offers a unique perspective into the everyday lives of young people around the world. In each episode we are introduced to a child in a far away land. We follow the child on a typical day while learning their heritage, customs and beliefs. We learn that although ways of life may differ, people around the world share many commonalties.

After viewing this series, students will be able to:

- Locate featured countries on a world map.
- Recognize traditions and customs of other countries.
- Compare and contrast the way of life in America with that of other countries.
- Describe regional culture and traditions.
- Identify famous artists, works of art and art forms.
- Respect other's beliefs and traditions.
- Appreciate vernacular music and dance.

Think About:

- What would life be like without electricity, phones, running water, paved roads, air conditioning, or cars?
- What forms of energy are used to fuel different parts of the world?
- How does the practice of yoga ease fears and relieve pain?
- How can diet reflect cultural beliefs and customs?
- Many children wear uniforms to school. Is this a good idea? Why or why not?
- How does an education improve economic conditions for people?
- How are computers changing the way civilized nations work and do business?
- What does modern art attempt to do?
- How do music and dance reflect the beliefs of a society?
- Why do folklore and superstition play an important role in some cultures?
- In many countries, men and women have very distinct role or functions. Define some.
- Why is the United States often referred to as "the great melting pot?"
- From what countries have Americans adopted their traditions?
- Why does adolescence signify a major turning point in many cultures?
- Do you think home remedies are as effective as manufactured medications for treatment of illnesses? Why or why not?
- How do featured sports differ from those played in the United States?

an encore network

Lesson Plan for The Eddie Files

Run Time: 16 episodes/30 minutes each
Recommended Grade Level: 3 - 8
Curricular Area: Math and Personal Development/Careers
Source: Foundation for Advancements in Science and Education (FASE)

After viewing this program, students will be able to:

- ☞ Learn math through motivational projects.
- ☞ Apply mathematics to real life situations.
- ☞ Explore potential higher learning and career opportunities.
- ☞ Overcome prejudices about minorities and women performing non-stereotypical jobs.
- ☞ Understand the importance of math.
- ☞ Design simple devices or projects to illustrate mathematical principles.

Synopsis:

Each episode of "The Eddie Files" combines hands-on classroom lessons that illustrate math concepts, interviews with professionals who use these concepts in their everyday work, and a fictional storyline revolving around math as seen through the eyes of Eddie, an 11-year-old boy who keeps files and photographs on the careers that use these elements.

Think About:

- ✘ How is technology affected by math?
- ✘ In what situations might you use estimation? Why would you use it?
- ✘ Why are statistics important in any profession?
- ✘ How is math relevant to the fashion industry? To sports? To musicians?
- ✘ Name several professions that use math everyday.
- ✘ How is geometry used in designing structures or products?
- ✘ How are fractions useful? Name several activities that require using fractions.
- ✘ How do statistics help you form opinions or make decisions?
- ✘ What does the decimal indicate in monetary terms?
- ✘ How is the value of a digit determined?
- ✘ How does using food, candy or products help illustrate math principles?
- ✘ Why is it improper to use "and" when saying numbers larger than 99?

Suggested Activities:

- ✘ Invite speakers from different fields to discuss how math plays a role in their daily jobs.
- ✘ Visit area businesses to discover how math plays an active role in the daily operations (Go to a restaurant to see how math influences inventory orders, menus prices, portion sizes).
- ✘ Conduct a "Gallup poll" on the favorite musician, actor, movie, etc. at your school.

Key Vocabulary:

Estimation	Geometry	Polygon	Fractions
Diameter	Distance	Time	Speed
Statistics	Place Value	Circles	Decimals
Length	Area	Strategy	Patterns
Volume	Counting	Principle	Design

an encore network

Lesson Plan for Mark's Web World

Run Time: 33 episodes/30 minutes each
Recommended Grade Level: 6 - 12
Curricular Area: Science/Technology

After viewing this program, students will be able to:

- Use the Internet to research information and communicate with others.
- Make educated choices when selecting computer software.
- Explore potential higher learning and career opportunities.
- Understand the importance of computers.

Synopsis:

Computer expert Mark Bunting shares with teens the latest in computer technology, the Internet, cool Web sites, and reviews of new computer software related to the particular topic of the show. The fast-paced show includes interviews with people whose jobs require them to use computers in very unique ways. The series emphasizes responsible entertainment and educational uses of the computer, Internet and software.

Think About:

- What role do computers play in sports?
- How can computers help to physically rehabilitate people after injuries?
- How do computers help design golf courses?
- What jobs cannot be performed by computers?
- How have computers helped businesses manage regional offices more efficiently?
- How have computers made it easier to communicate globally?
- How is it possible to participate in a college course without physically being there?
- How do computers impact every aspect of space exploration?
- How can computers help you conduct research on a particular topic?
- Can the Internet replace the need for books and libraries? Why or why not?
- How is it possible for two people in different parts of the country to play a virtual reality game together?

Suggested Activities:

- Invite speakers from different fields to discuss how computers plays a role in their daily jobs.
- Select a topic, research it using only the Internet and write a report. Be sure to include a bibliography of Web sites.
- Visit a computerized virtual reality theme park and write a report on how it works.
- Write a review for several theme-related software and game packages. Be sure to list the pros and cons for each program.
- Plot a timeline of the evolution of the computer.

Key Vocabulary:

Virtual Reality	Computer-generated	Software
Cyber	Animation	Web site
Graphics	Internet	Interactive

an encore network

Lesson Plan for
Futures with Jaime Escalante

Run Time: 24 episodes/15 minutes each
Recommended Grade Level: 6 - 12
Curricular Area: Math and Personal Development/Careers
Source: Foundation for Advancements in Science and Education (FASE)

Synopsis:

Celebrity and expert speakers, and fast-paced visuals demonstrate the practical applications of math and science. Host Jaime Escalante, subject of the film "Stand and Deliver," takes a unique approach to these often intimidating subjects. Interviews with successful people in the working world explain how real life, everyday situations require math and science. Whenever possible, mathematical and scientific principles are put into sports-related context, making dissemination of information more manageable for students. The emphasis of this series is to motivate youngsters about math and science by providing ways students can apply learned skills in their lives or future careers.

After viewing this program, students will be able to:

- Learn math and science through motivational projects.
- Apply mathematical and scientific principles to real life situations.
- Explore potential higher learning and career opportunities.
- Understand the importance of math and science.
- Conduct simple scientific experiments to support theories.
- Answer questions using research skills.
- Draw conclusions based on observation and data.
- Design simple devices or projects to illustrate mathematical or scientific principles.

Think About:

- How is technology affected by math and science?
- Why are statistics important in any profession?
- What are some of the different types of energy, as well as the advantages and disadvantages of each?
- How is math relevant to the fashion industry? To science? To ecology?
- Why is protecting the ecosystem important?
- Name some professions that work with light.
- What are at least 5 ways light is used?
- What is the role of a land surveyor and how is the information he/she gathers used?
- What mathematical concepts are essential to map-making?

an encore network

Lesson Plan For
Interactions: Real Math - Real Careers

Run Time: 12 episodes/15 minutes each
Recommended Grade Level: 6 - 12
Curricular Area: Math and Personal Development/Careers
Source: Foundation for Advancements in Science and Education (FASE)

Synopsis:

This innovative program takes math and science out of the traditional classroom setting and into various work sites around the world. Interviews feature professionals who share how math, science and technology play an integral part in their careers. Students explore how math and science are applied to everything from wildlife preservation, digital communications, athletic sports, voyages in outer space or every day living.

After viewing this program, students will be able to:

- ☞ Learn math and science through motivational projects.
- ☞ Apply mathematical and scientific principles to real-life situations.
- ☞ Explore potential higher learning and career opportunities.
- ☞ Understand the importance of math and science.
- ☞ Conduct simple scientific experiments to support theories.
- ☞ Answer questions using research skills.
- ☞ Draw conclusions based on observation and data.
- ☞ Design simple devices or projects to illustrate mathematical or scientific principles.
- ☞ Research the best methods to tackle environmental concerns and dilemmas.
- ☞ Become sensitive to environmental conditions.

Think About:

- ✘ How is solar energy converted into electricity?
- ✘ What does it mean to digitize something?
- ✘ What are some ways of delivering digital information?
- ✘ What are the benefits of digital technology?
- ✘ What factors affect our water supply?
- ✘ What measures would be taken if there was a severe water shortage in your state?
- ✘ How does the extinction of a species affect an ecosystem?
- ✘ What role do worldwide breeding programs serve?
- ✘ Can scientific advances sometimes have a negative effect on the environment?
- ✘ How do musicians use math?
- ✘ What factors divide the population into fashion segments?

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Lesson Plan For
Math — Who Needs It?

Run Time: 1 episodes/1 hour
Recommended Grade Level: 6 - 12
Curricular Area: Math and Personal Development/Careers
Source: Foundation for Advancements in Science and Education (FASE)

Synopsis:

Renowned educator Jaime Escalante, subject of the film "Stand and Deliver," motivates students about often intimidating curricular areas of math and science. By introducing math short-cuts, interviewing successful professionals in exciting careers and celebrities who discuss their thoughts on math, students discover that math is everywhere. There is no escaping the real-life, everyday situations that require math. In the process of learning, kids also realize that math can be fun.

After viewing this program, students will be able to:

- Learn math and science through motivational projects.
- Apply mathematical and scientific principles to real-life situations.
- Explore potential higher learning and career opportunities.
- Understand the importance of math and science.
- Conduct simple scientific experiments to support theories.
- Draw conclusions based on observation and data.
- Design simple devices or projects to illustrate mathematical or scientific principles.
- Discover that math is fun and exciting.
- Equate a lack of math knowledge with illiteracy.

Think About:

- How is technology affected by math and science?
- What are some everyday activities that require math? What math skills do they involve?
- How does math help consumers make wise purchasing choices?
- How is music influenced by math?
- Why are statistics important in any profession?
- How is math relevant to the fashion industry?
- What are some situations that you would use estimation?
- How are angles used in the design of sports equipment?
- How is math used in designing new consumer products?
- What are some of the different fields of engineering?

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Lesson Plan for Musical Encounter

Program Name: Musical Encounter
Run Time: 42 episodes / 30 minutes each
Curricular Area: Music
Recommended Grade Level: 3 - 8

Synopsis:

A continuing series of programs feature outstanding young musicians performing for student audiences from kindergarten through sixth grade. Special guest hosts provide introductions, answer questions from the audiences and provide historical and miscellaneous musical information. The goal of the series is to bring together young performers with young audiences to foster an appreciation and understanding of the challenges players face.

After viewing, students will be able to:

- Gain an appreciation of music and the dedication it takes to be a musician.
- Demonstrate how musical tones are shown on a staff and what the lines and spaces indicate.
- Understand a variety of rhythmic patterns.
- Distinguish the importance of definite and indefinite pitch in the performance of both jazz and classical music.
- Recognize the sections of an orchestra and identify different instruments in each section.
- Understand the kinds of music famous composers wrote and become familiar with their styles.
- Understand that folk music and dance are important parts of all cultures and allow stories about the way of life to be passed from generation to generation.

Think About:

- What are some technical difficulties of playing a string instrument?
- How are different sounds produced on woodwind instruments?
- Why is the piano often called the "basic musical instrument"? Why is it classified as both a percussion and string instrument?
- What role does a conductor play in an orchestra? Could an orchestra perform without one?
- How are the flute and piccolo different from the rest of the woodwind family? What characteristics do woodwinds share?
- What is the difference between a band and an orchestra?
- What is a symphony?
- What are the major differences between a classical guitar and a folk guitar? Between an acoustic and an electric guitar?
- Once a dance has been choreographed, how can the arrangement of movements be recorded so others can reproduce it?
- Although the saxophone is a woodwind, what characteristics does it have that are similar to the brass family?
- What is the difference in the function of the pedals on the harp and those of the piano?

America's Kidz Network
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Lesson Plan For Kids' Planet Video

Program Name: Kids' Planet Video
Run Time: 13 episodes / 30 minutes
Curricular Area: Social Studies
Recommended Grade Level: 4 - 10

After viewing this series, students will be able to:

- Locate featured countries on a world map.
- Recognize traditions and customs of other countries.
- Compare and contrast American life with that of other countries.
- Describe regional culture and traditions.
- Respect other's beliefs and traditions.
- Appreciate art forms, artistic expression, music, and dance.

Synopsis:

This magazine series is written, directed, edited, and produced by kids. It allows children from 35 countries to share ideas, feelings and knowledge. Through home videos, e-mail and letters, these young people are able to record their daily lives and express themselves with video diaries that highlight their wide range of interests. This global exchange of lifestyles helps kids develop an appreciation for other cultures and provides a vehicle for kids to take pride in their own heritage. Video cameras and training are available to participants.

Think About:

- What would life be like without electricity, phones, running water, paved roads, air conditioning, or cars?
- Many children have jobs to help support their families. What types of jobs do young people in the United States have? For what reasons do they have jobs?
- How can diet reflect cultural beliefs and customs?
- Are school uniforms a good idea? Why or why not?
- How do some of the featured recreational activities differ from those in this country?
- How does education improve economic conditions for people?
- How do music and dance reflect the beliefs of a society?
- Why do folklore and superstition play an important role in some cultures?
- In many countries, men and women have very distinct roles or functions. Define some.
- Why is the United States often referred to as "the great melting pot"?
- From what countries have Americans adopted their traditions?
- What effect does war have on countries and their people?
- Why does adolescence signify a major turning point in many cultures?
- Do you think home remedies are as effective as manufactured medications for treatment of illnesses? Why or why not?
- What can we do to preserve the environment?

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Lesson Plan For We Are The Children

Program Name: We Are The Children
Run Time: 36 episodes / 30 minutes
Curricular Area: Social Studies
Recommended Grade Level: 4 - 8

Synopsis:

This program offers a unique perspective into the everyday lives of young people around the world. In each episode we are introduced to a child in a far away land. We follow the child on a typical day while learning their heritage, customs and beliefs. We learn that although ways of life may differ, people around the world share many commonalties.

After viewing this series, students will be able to:

- ☞ Locate featured countries on a world map.
- ☞ Recognize traditions and customs of other countries.
- ☞ Compare and contrast the way of life in America with that of other countries.
- ☞ Describe regional culture and traditions.
- ☞ Identify famous artists, works of art and art forms.
- ☞ Respect other's beliefs and traditions.
- ☞ Appreciate vernacular music and dance.

Think About:

- ✘ What would life be like without electricity, phones, running water, paved roads, air conditioning, or cars?
- ✘ What forms of energy are used to fuel different parts of the world?
- ✘ How does the practice of yoga ease fears and relieve pain?
- ✘ How can diet reflect cultural beliefs and customs?
- ✘ Many children wear uniforms to school. Is this a good idea? Why or why not?
- ✘ How does an education improve economic conditions for people?
- ✘ How are computers changing the way civilized nations work and do business?
- ✘ What does modern art attempt to do?
- ✘ How do music and dance reflect the beliefs of a society?
- ✘ Why do folklore and superstition play an important role in some cultures?
- ✘ In many countries, men and women have very distinct role or functions. Define some.
- ✘ Why is the United States often referred to as "the great melting pot?"
- ✘ From what countries have Americans adopted their traditions?
- ✘ Why does adolescence signify a major turning point in many cultures?
- ✘ Do you think home remedies are as effective as manufactured medications for treatment of illnesses? Why or why not?
- ✘ How do featured sports differ from those played in the United States?

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Lesson Plan for Field Trip

Run Time: 27 episodes/30 minutes each
Recommended Grade Level: 1 - 6
Curricular Area: Social Studies

Synopsis:

Host Barry Louis Parker guides students on tours of airports, aquariums, animation studios, and scientific laboratories. Field experts explain the behind-the-scenes inner-workings of each location and answer student questions. A list of suggested reading and additional resources is provided at the conclusion of each "Field Trip."

After viewing this program, students will be able to:

- Develop an interest in history, science, art, music, business and culture.
- Appreciate different art forms.
- Research historical events.
- Apply scientific principles to real-life situations.
- Explore potential higher learning and career opportunities.
- Draw conclusions based on observation and data.
- Investigate the best methods to tackle environmental concerns and dilemmas.

Think About:

- What is the significance of masks in African culture?
- What was life like during medieval times?
- What is the purpose of a canal?
- What is the most important job at an airport?
- How do stalactites and stalagmites form? What is the difference between the formations?
- What traits are important when choosing a dog for a pet?
- Why is it important to study different species of animals and plants?
- How does the extinction of a species influence an ecosystem?
- What are some things we can do to preserve the environment?
- Why are so many scientific experiments done aboard the space shuttle?

Suggested Activities:

- Plot a timeline of historical events of the Middle Ages.
- Film an episode of "Field Trip" about your school. Write a detailed schedule, include what will be discussed and who will be interviewed.
- Hold a mock community meeting to discuss plowing a heavily wooded area in favor of a new amusement park. Debate both sides of the issue.
- Research the Civil War and write a report on a major battle.
- Start a community awareness project to improve or preserve the environment. Write letters to city officials and businesses, hang posters and flyers, etc.
- Write a letter to "Field Trip" suggesting the next destination as well as the questions you would like answered.

Key Vocabulary:

Forage	Topography	Planetarium	Navigate	Atom
Cavern	Middle Ages	Aquarium	Quark	Animation

America's kidz network
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Lesson Plan for Scientific Eye

Run Time: 38 episodes/30 minutes each
Recommended Grade Level: 5 - 9
Curricular Area: Science

Synopsis:

Baffling questions, cartoons, comical sketches and computer graphics make science exciting. Hands-on demonstrations illustrate answers to how and why things work. This series encourages students to use scientific principles by making science relevant to everyday life.

After viewing this program, students will be able to:

- Learn science through motivational projects.
- Apply scientific principles to real-life situations.
- Conduct simple scientific experiments to support theories.
- Draw conclusions based on observation, data and research.
- Design simple devices or projects to illustrate scientific principles.

Think About:

- What causes a ship to be buoyant?
- How is sound produced?
- How can echoes be useful?
- Why does the moon appear to have different shapes throughout the month?
- What causes a solar eclipse?
- What products can be manufactured from recycled items?
- Under what circumstances is it best not to use water when extinguishing fires?
- How can acids be both beneficial and dangerous?
- What was life like before there was central air conditioning and refrigerators?
- Why are scientists experimenting with alternate forms of farming?
- How do human-made habitats differ from natural ones?
- When designing a structure, what unique structural stresses must be considered?
- Why are so many scientific experiments done aboard space shuttles?
- Why do some buildings survive hurricanes and earthquakes while others don't?

Suggested Activities:

- Perform comparison testing of laundry detergents or other household cleaners. How effectively do they clean? Remove stains? Retain fabric colors/softness?
- Invite scientists to discuss how science plays a role in their job.
- Experiment with a variety of growing techniques such as light conditions, with or without soil, weather conditions, etc. Keep a log to note your observations.
- Design and construct a machine.
- Research the various forms of energy and report on each.

Key Vocabulary:

Gravity	Insulation	Suction	Organism
Polymer	Evaporation	Buoyancy	Erosion
Vibration	Force	Friction	Cell
Theory	Abrasion	Control	Energy

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Lesson Plan for Mathematical Eye

Run Time: 28 episodes/30 minutes each
Recommended Grade Level: 4 - 9
Curricular Area: Math

Synopsis:

Answers to perplexing questions, cartoons and computer graphics make learning math fun. Hands-on demonstrations using food and everyday products help illustrate the use of math skills. Students are introduced to various jobs that use math. This series motivates students by emphasizing the application of math principles.

After viewing this program, students will be able to:

- ☞ Learn math and science through motivational projects.
- ☞ Apply mathematical and scientific principles to real-life situations.
- ☞ Explore potential higher learning and career opportunities.
- ☞ Understand the importance of math and science.
- ☞ Draw conclusions based on observation and data.
- ☞ Design simple devices or projects to illustrate mathematical or scientific principles.

Think About:

- ✘ How is technology affected by math?
- ✘ How does using food, candy or products help illustrate math principles?
- ✘ How do statistics help us form opinions or make decisions?
- ✘ What mathematical concepts are essential to map-making?
- ✘ How do computers play a role in everyday life? Advantages? Disadvantages?
- ✘ How can a map not drawn to scale be misleading?
- ✘ What are some situations in which you would use estimation?
- ✘ Why is it improper to use "and" when saying numbers larger than 99?
- ✘ How would you use logic to prove your point of view?
- ✘ What would happen if we didn't have boundary lines?
- ✘ How are different types of graphs used to convey information?

Suggested Activities:

- ✘ Invite speakers from different expertise areas to discuss how math plays a role in their daily job.
- ✘ Create games, similar to Battleship, using coordinates.
- ✘ Draw a map to scale of your school zone, neighborhood, classroom or home.
- ✘ Conduct a "poll" on the favorite musician, actor, movie, etc. at your school. Use as many types of graphs as possible to show your results.

Key Vocabulary:

Fields	Problem Solving	Ratio	Coordinates
Database	Square Numbers	Volume	Probability
Equations	Prime Numbers	Surface	Symmetry

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Lesson Plan for Global Family

Run Time: 60 episodes/30 minutes each
Recommended Grade Level: 4 - 9
Curricular Area: Social Studies

After viewing this program, students will be able to:

- ☞ Develop an interest in wildlife and nature.
- ☞ Appreciate the interrelationship of the environment, animals and humans.
- ☞ Research preservation and conservation methods.
- ☞ Investigate the best methods to tackle environmental concerns.

Synopsis:

This captivating series emphasizes the importance of all creatures big and small. Viewers travel the world to learn about endangered animal species, the value of plant life, water sources of the planet, and the measures underway to protect these precious resources. These glimpses into the wild illustrate how man, the environment and animals impact the balance within the ecosystem.

Think About:

- ✘ Why is it important to study different species of animals and plants?
- ✘ Which is more important, protecting the environment or advancing technologically?
- ✘ How do man-made animal habitats differ from natural animal habitats?
- ✘ How does the economy influence the environment?
- ✘ What can you do to preserve the environment?
- ✘ How has industrialization impacted the ecosystem?
- ✘ How does the extinction of one species impact the survival of another species?
- ✘ Is it possible to re-train some animal species to adapt to living among man?
- ✘ Can species population size hinder its survival? How?
- ✘ Why do shorelines sustain the greatest percent of life found in any river or lake?

Suggested Activities:

- ✘ Hold a mock community meeting to discuss plowing a heavily wooded area in favor of a new amusement park. Debate both sides of the issue.
- ✘ Start a community awareness project to improve or preserve the environment. Write letters to city officials and businesses, hang posters and flyers, etc.
- ✘ Select an endangered animal and write a report on it, include conservation efforts.
- ✘ Write a persuasive letter to a company or organization which you feel is threatening the environment. Offer suggestions on what they can do to protect the ecosystem.
- ✘ Volunteer at the nearest zoo, aquarium, or animal sanctuary to learn more about endangered animals.

Key Vocabulary:

Endangered	Observation	Migration	Herbicide
Extinction	Rain Forest	Gamekeeper	Runoff
Conservation	Deforestation	Ecology	Afforestation
Breeding Programs	Interdependence	Predator	Reproduction
Habitat	Preservation	Instinct	Nesting

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Lesson Plan for PUMPED!

Run Time: 26 episodes/30 minutes each
Recommended Grade Level: 3 - 12
Curricular Area: Physical Education

After viewing this series, students will be able to:

- ☞ Respect the hard work and dedication of athletes.
- ☞ Develop an understanding of the science of sports and athletic equipment.
- ☞ Understand the skills needed to perform athletic sports.
- ☞ Appreciate different forms of athletic expression.
- ☞ Develop an interest in sports and physical fitness.

Synopsis:

This magazine series features teen hosts Richard and Cara, who interview professional athletes offering tips on being successful, insight into the world of sports and highlights of their careers. The show also profiles youngsters, who discuss the dedication and personal sacrifice that goes into being a top-notch athlete. Viewers learn about inspirational athletes who are disabled and attempt to answer trivia that stumps the pros.

Think About:

- ✘ Are athletes overpaid?
- ✘ Why are tickets to sporting events so expensive?
- ✘ Should athletes charge fans for their autographs? Why or why not?
- ✘ How do endorsements from sports superstars increase the sales of products?
- ✘ Should reporters of the opposite sex be allowed to conduct locker room interviews?
- ✘ Should women be allowed to play on the same professional sports teams as men? Explain.
- ✘ How do some parents put too much pressure on their children to perform well in sports?
- ✘ What are some sports activities people with disabilities can participate in?
- ✘ Should athletes who have criminal records be allowed to play? Why or why not?
- ✘ Should professional athletes be role models for young children? Why or why not?
- ✘ What do children in competitive sports miss out on?

Suggested Activities:

- ✘ Compile a list of unusual sporting activities and write a description for each one.
- ✘ Construct a timeline of the creation of different Olympic sports competitions.
- ✘ Select a sport and hold a school-wide contest to break a **Guinness World Book** record.
- ✘ Write your dream "PUMPED!" script – include the sports heroes you would interview, sports trivia, and the featured sports and athletes.

Key Vocabulary:

Competition	Contact Sports	Professional	Triathlon
Unicycle hockey	Motorcross	Decathlon	Curling
Curveball	Synchronized	Olympics	Freestyle
Aerodynamic	Design	Cross-country	Amateur

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Lesson Plan For Scratch

Run Time: 40 episodes/30 minutes each
Recommended Grade Level: 5 - 9
Curricular Area: Personal Development

After viewing this series, students will be able to:

- Explore tough social issues.
- Investigate different hobbies and career opportunities.
- Develop a social tolerance for different people.
- Respect the achievements and adversities of others.
- Compare and contrast teen lifestyles in different socioeconomic levels.

Synopsis:

This fast-paced magazine show is hosted by teens reporting from exciting locations around the country. Each episode features the hosts on daring adventures, interviewing teens with cool jobs and hobbies, playing "Cupid," and exploring tough teen issues such as teen pregnancy, suicide, and drug and alcohol abuse by interviewing adolescents who have survived tough times.

Think About:

- How can spending time in a prison with criminals be beneficial for troubled youth?
- How can peer pressure have both negative and positive influences on an individual?
- What sacrifices do parents have to make for their children? Would you be willing to make those sacrifices as a teen parent?
- Should child prodigies pursue higher learning at early ages or should they be kids?
- Often the judicial system fails to rehabilitate juvenile delinquents. What alternative programs or forms of punishment might have more positive effects?
- What factors contribute to homelessness?
- How can troubled times often be the best learning tools?
- What do children in competitive sports, modeling, acting, or advanced studies miss out on?
- If you could pick a dream job, what would it be?
- Is cruel and unusual punishment an effective deterrent?

Suggested Activities:

- Produce a series based on "Scratch" for your school – interview classmates about their hobbies, jobs, love interests and social concerns.
- Create a school volunteer program to work with the homeless, elderly, terminally ill, etc.
- Work in teams to come up with unique businesses. Create a budget, assign responsibilities, advertise your services and get to work. Write a report on how well your company did.

Key Vocabulary:

Obesity	Addiction	Rehabilitation	Environmentalist
Scared Straight	Fad	Autistic Savant	Audition
Peer Pressure	Slang	Hybrid Sport	Paralysis
Alcoholism	Prodigy	Eating Disorder	Victim

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Lesson Plan For So You Want To Be?

Run Time: 26 episodes/30 minutes each
Recommended Grade Level: 5 - 8
Curricular Area: Personal Development/ Careers

After viewing this program, students will be able to:

- ☞ Apply academic principles to real-life.
- ☞ Explore potential higher learning and career opportunities.
- ☞ Draw conclusions based on observation and data.
- ☞ Respect the talents of all professions.

Synopsis:

Hosts Melody Young and Jeff Gardner introduce viewers to a broad range of career opportunities. Each episode features behind-the-scenes glimpses into two different job fields, interviews with experts about job qualifications and training, pertinent vocabulary, questions from students, and professional contact information for professional institutions and associations in particular fields of employment.

Think About:

- ✘ How will the skills you learn in school benefit you later in life?
- ✘ What are some jobs which require math? English? Science? History?
- ✘ What are some professions which require constant training?
- ✘ How does one person's job performance impact the efficiency of another person's job (i.e. nurse/doctor, secretary/executive)?
- ✘ What do you want to be when you grow up? What skills are required to do the job?
- ✘ How does math play a role in everyday life?
- ✘ What are the job responsibilities of a parent?
- ✘ What daily chores are you required to do? How could you turn them into a business?

Suggested Activities:

- ✘ Using the Help Wanted section of the newspaper, select a job and write a cover letter and resumé based on the job description.
- ✘ Hold Career Day to film an episode of "So You Want To Be?" Invite parents to discuss their jobs.
- ✘ Select a job and write an ad for the Help Wanted section of the newspaper describing the job requirements.

Key Vocabulary:

Client	Analyze	Executive
Sales	Apply	Investor
Training	Asset	Designer
Career	Budget	Technician
Entrepreneur	Apprentice	Reporting

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Lesson Plan for The World of Volcanoes

Run Time: 6 episodes/30 minutes each

Recommended Grade Level: 7 - 10

Curricular Area: Science/Geography

After viewing this program, students will be able to:

- ☞ Describe the formation of volcanoes.
- ☞ Comprehend the importance of information gathered by volcanologists.
- ☞ Understand the impact of volcanic activity on the environment.
- ☞ Explain the characteristics of different types of volcanoes.
- ☞ Realize the force of volcanic eruptions.

Synopsis:

World renowned volcanologist Maurice Krafft takes students on guided tours of volcanoes around the world. Each episode reflects more than 20 years of research into volcanoes from the most active in the world to the chronicles of man's battle against volcanic eruptions to the rare formations of lava lakes and acid lakes.

Think About:

- ✘ How long does it take the environment to recover after a volcanic eruption?
- ✘ How can scientists tap into this massive source of energy?
- ✘ How do volcanoes located on hot spots differ from those along the edge of plates?
- ✘ How are islands formed as a result of volcanoes?
- ✘ How are volcanic eruptions predicted?
- ✘ What causes an increase in earthquake activity prior to a volcanic eruption?
- ✘ What causes a volcano to erupt?
- ✘ Where is the source of magma located and what triggers it to rise?
- ✘ What causes a steamblast eruption?
- ✘ What is a shield volcano?
- ✘ What does measuring electro-conductivity indicate?

Suggested Activities:

- ✘ Design a model of a volcano with the capability to erupt.
- ✘ Plot the location of volcanoes on a world map.
- ✘ Select a region with many volcanoes and create a timeline of volcanic activity in that region.
- ✘ Write a story about what it would be like to live near a volcano that was about to erupt.
- ✘ Write a news report on a volcano that is about to erupt.

Key Vocabulary:

Eruption	Lava	Hot Spot	Volcanology
Molten	Faults	Compression	Shield Volcano
Crater	Plates	Survey	Distance Meter
Geotechnician	Magma	Steamblast	Electro-conductivity

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Lesson Plan for Art Attack

Program Name: Art Attack
Run Time: 65 episodes / 30 minutes each
Recommended Grade Level: 3 - 10
Curricular Area: Art

Synopsis:

Easy-to-make, inexpensive art projects are demonstrated using every day odds and ends found around the house. The series offers parents, teachers and kids an array of tips for artistic expression from simple tasks to rainy day projects to great gift ideas and decorating tips.

After viewing, students will be able to:

- Appreciate the different forms of art.
- Express themselves using a variety of creative methods.
- Identify different painting techniques.
- Demonstrate the ability to create colors by mixing paints.
- Utilize a variety of techniques to demonstrate shading effects.
- Create the impression of depth.

Think About:

- What is art? What makes a good artist?
- Why are dancers and musicians also referred to as artists?
- What is the difference between a cartoon and a caricature?
- What is another word for mirror images?
- How do you create shadow effects?

Suggested Activities:

- Create a collage using pictures that depict a particular theme or emotion.
- Create a cartoon character and write a weekly strip for your school newspaper.
- Use a variety of materials to make a collage depicting the main idea of a story.
- Paint with a variety of uncut and cut fruits and vegetables such as star fruit, oranges, potatoes, artichokes, and broccoli. Discuss the different textures they leave and the designs they make.
- Decorate different borders or frames using odds and ends like change, pasta noodles, beans, buttons, etc.
- Make a calendar for the upcoming year. Decorate the pages using some of the techniques demonstrated on the program.

Key Vocabulary:

Origami	Batik	Stencil	Illuminated
Sculpture	Collage	Perspective	Mounting
Silhouette	Caricature	Crosshatching	Plaster
Expression	Distance	3D	Animation

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Lesson Plan for Music Factory

Program Name: Music Factory
Run Time: 10 episodes / 30 minutes each
Curricular Area: Music
Recommended Grade Level: 3 - 8

Synopsis:

This upbeat program features kid hosts introducing musical concepts, musicians and instruments. Reinforcing the musical concepts are entertaining blocks which feature extraordinary young artists, classroom activities and hands-on experiments, demonstrations of instruments, puzzles and wacky skits. Each episode is wrapped with reviews of concepts and vocabulary.

After viewing this series, students will be able to:

- Understand the basic concepts of music.
- Gain music appreciation.
- Learn about composers and musicians.
- Explore a wide range of music.
- Explore diverse compositions and instruments found in different cultures.
- Identify members of instrument families.
- Demonstrate an understanding of music signs and symbols through movement and listening activities.
- Demonstrate through singing and hand motions an understanding of contour.
- Differentiate between Major and minor chords through listening activities.

Think About:

- What are the ABCs of music?
- What are the elements of rhythm?
- What are the elements of tone?
- What is the difference between pitch and timbre?
- How can you change timbre?
- What is a scale?
- What are the different types of rests and their values?

Suggested Activities:

- Construct musical instruments using ordinary household items and explore the concepts of timbre and rhythm patterns.
- Play the "Hokey Pokey" to reinforce musical concepts such as instruments, music notes, composers, etc.
- Listening to a piece of music, identify chords as Major or minor as well as identify the instruments. Categorize them by musical family.
- Using eight glass bottles with varying quantities of water, create scales by arranging bottles from lowest to highest pitch in ascending order.

Key Vocabulary:

Tone	Rhythm	Beat	Scale	Texture
Pitch	Vibration	Tempo	Melody	Form
Timbre	Harmony	Meter	Chord	

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Lesson Plan For How 2

Run Time: 44 episodes/15 minutes each
Curricular Area: Science
Recommended Grade Level: 4 - 7

After viewing this program, students will be able to:

- ☞ Draw conclusions based on observation and data.
- ☞ Conduct simple scientific experiments to support theories.
- ☞ Apply scientific principles to real life situations.
- ☞ Answer questions using research skills.

Synopsis:

Unusual and perplexing questions about how things work are demonstrated. To help illustrate the explanations, three scientist-hosts conduct highly technical experiments and consult a variety of sources and experts to solve life's simple mysteries.

Think About:

- ✗ What causes objects to have elasticity?
- ✗ What are some examples of elastic sponges?
- ✗ What causes propellers to appear invisible while spinning rapidly?
- ✗ How does the amount of water in a bottle affect sound?
- ✗ What purposes do windmills serve?
- ✗ How does your mind play tricks on you?
- ✗ What are the signs of poisonous mushrooms?
- ✗ What are the characteristics of an insect?
- ✗ What makes a duck have buoyancy?

Suggested Activities:

- ✗ Experiment with a variety of growing techniques using some of the examples illustrated on the series. Keep a log to note your observations.
- ✗ Have fun with words! Students research the origins of words, create their hieroglyphics to convey messages, etc.
- ✗ Students work in teams to come up with original How 2 problems and demonstrate the explanations to the class.

Key Vocabulary:

Gravity	Balance	Repel	Latent Heat
Theory	Anatomy	Carbon-dating	Hieroglyphics
Leach	Stationary	Pliable	Atmospheric
Identical	Kaleidoscope	Secrete	Pressure
Suspension	Origami	Optical Illusion	Electro-magnets

an encore network

F.R.O.G. (Friends of Research and Odd Gadgets)

Run Time: 20 episodes/30 minutes each
Curricular Area: Science
Recommended Grade Level: 3 - 8

After viewing this series, students will be able to:

- Make observations and gather data to draw conclusions.
- Research the best methods to tackle problems.
- Apply scientific principles to real life situations.
- Construct simple gadgets.

Synopsis:

With the aid of a computer, kids learn simple hands-on science lessons that teach them research and experimentation. Using odds and ends found around the house, yard and garage, plus a little thought and reports from field reporters, young scientists learn to build an energy-efficient doghouse, construct a solar oven, discover how fish breath underwater and explore how a chicken's foot inspired the building of a giant robotic arm.

Think About:

- What are some things we can do to conserve energy?
- How can technology and art work together?
- How many different sources of energy do we use to energize our world? What are the advantages and disadvantages of each?
- How can scientists learn from observing animal behavior?
- Can scientific advances sometimes have a negative effect on the environment?
- What jobs cannot be done by computers or robots?
- What are some naturally occurring magnets?
- How can the sun be used as a means to keep time?
- What are some objects that are made from recycled plastics?
- How do short wave radios differ from am/fm radios?
- Why should story boards be used when creating a cartoon?
- How can illusions be used to trick our minds?

Suggested Activities:

- Visit a recycling center to research how materials are processed and the many uses of products that are made from recycled materials.
- Organize and judge a science fair, based on projects made from materials typically found around the house.
- Research the different forms of energy and the advantages and disadvantages of each.
- Using a home video camera, write, shoot and edit a television commercial.

Key Vocabulary:

insulation	magnetic	nuclear power	oscilloscope
solar-heat	aquarium	robot	sound waves
conservation	generator	animation	short waves
electro-magnets	hydro-power	vibrations	illusion

an encore network

Lesson Plan for Green Earth Club

Program Name: Green Earth Club
Run Time: 23 episodes / 15 minutes
Recommended Grade Level: 4 - 6
Curricular Area: Science & Social Studies

After viewing this series, students will be able to:

- ☞ Make observations and gather data to draw conclusions.
- ☞ Research the best methods to tackle environmental concerns and dilemmas.
- ☞ Initiate local community projects to improve or preserve the environment.
- ☞ Become sensitive to environmental conditions.
- ☞ Communicate a message through the use of persuasion.
- ☞ Design simple devices or projects to eliminate waste.

Synopsis:

This program offers a unique examination of how our everyday life impacts the environment. Young hosts explore environmental issues and hear contrasting points of view on controversial topics such as fur trading, chemical manufacturing, timberlands, etc. Each episode includes spotlights on EnviroKids, children who have initiated local environmental projects; Green Tips on the 3 "Rs": Reduce, Reuse and Recycle; Get Activated; and reviews of books, shows and movies about the environment. Messages are reinforced through song and dance routines that young guests have composed or choreographed.

Think About:

- ✗ What are some things we can do to preserve the environment?
- ✗ How many different sources of energy do we use to energize our world? What are the advantages and disadvantages of each?
- ✗ How can scientists learn from observing animal behavior?
- ✗ Can scientific advances sometimes have a negative effect on the environment?
- ✗ What are some objects that are made from recycled plastics?
- ✗ What happens to the environment when a species becomes extinct?
- ✗ What role in the environment do trees play?
- ✗ What are the advantages and disadvantages of organic versus chemical-use farming?
- ✗ Why can't all glass items be recycled?

Suggested Activities:

- ✗ Visit a recycling center to research how materials are processed and the many uses of products that are made from recycled materials.
- ✗ Start a community awareness project in the school to improve or preserve the environment.

Key Vocabulary:

toxic	compost	petroleum	wetland
urban renewal	agroforestry	pollution	solar-energy
organic	environment	sulphur emissions	conservation
endangered	habitat	acid rain	hydroelectricity
reforestation	extinction	landfill	

America's Kidz Network sm

an encore network

Lesson Plan For We Are The Children

Program Name: We Are The Children
Run Time: 36 episodes / 30 minutes
Curricular Area: Social Studies
Recommended Grade Level: 4 - 8

Synopsis:

This program offers a unique perspective into the everyday lives of young people around the world. In each episode we are introduced to a child in a far away land. We follow the child on a typical day while learning their heritage, customs and beliefs. We learn that although ways of life may differ, people around the world share many commonalties.

After viewing this series, students will be able to:

- ☞ Locate featured countries on a world map.
- ☞ Recognize traditions and customs of other countries.
- ☞ Compare and contrast the way of life in America with that of other countries.
- ☞ Describe regional culture and traditions.
- ☞ Identify famous artists, works of art and art forms.
- ☞ Respect other's beliefs and traditions.
- ☞ Appreciate vernacular music and dance.

Think About:

- ✘ What would life be like without electricity, phones, running water, paved roads, air conditioning, or cars?
- ✘ What forms of energy are used to fuel different parts of the world?
- ✘ How does the practice of yoga ease fears and relieve pain?
- ✘ How can diet reflect cultural beliefs and customs?
- ✘ Many children wear uniforms to school. Is this a good idea? Why or why not?
- ✘ How does an education improve economic conditions for people?
- ✘ How are computers changing the way civilized nations work and do business?
- ✘ What does modern art attempt to do?
- ✘ How do music and dance reflect the beliefs of a society?
- ✘ Why do folklore and superstition play an important role in some cultures?
- ✘ In many countries, men and women have very distinct role or functions. Define some.
- ✘ Why is the United States often referred to as "the great melting pot?"
- ✘ From what countries have Americans adopted their traditions?
- ✘ Why does adolescence signify a major turning point in many cultures?
- ✘ Do you think home remedies are as effective as manufactured medications for treatment of illnesses? Why or why not?
- ✘ How do featured sports differ from those played in the United States?

Exhibit B

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August 21, 1997

Ari Fitzgerald, Esquire
Senior Legal Advisor
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

EX PARTE COMMUNICATION

Re: Direct Broadcast Satellite Public Service Obligations,
MM Docket No. 93-25

Dear Mr. Fitzgerald:

This is to follow up on our discussion last week regarding the appropriate construction of the statutory framework for the Commission's rules in this proceeding. Encore Media Group LLC ("Encore") provides this further information and analysis regarding the implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") which added Section 335 to the Communications Act. More specifically, Encore addresses the statutory construction which makes clear that the non-commercial educational programming provided by Encore's WAM!/America's Kidz Network ("WAM!") meets the public interest requirements of Section 335(b).

Section 335(b)(1) mandates that the Commission require each DBS operator to reserve "a portion of its channel capacity . . . exclusively for noncommercial programming of an educational or informational nature." Encore respectfully submits that the further requirement in Section 335(b)(3) that DBS operators "shall meet" the requirements of the section "by making channel capacity available to national educational programming suppliers" is mandatory but non-exclusive such that the Commission may adopt rules authorizing DBS operators to satisfy at least a portion of the reserved channel capacity with non-commercial programming from other providers. In any event, the definition of "national educational programming suppliers" is sufficiently broad to include WAM!.

I. Section 335(b)(3) Does Not Require DBS Operators To Make Channel Capacity Available Exclusively to National Educational Programming Suppliers.

The core purpose of Section 335(b)(1) is to require DBS operators to reserve channel capacity for "non-commercial programming of an educational or informational nature." In upholding the constitutionality of Section 335, the Court of Appeals recognized this essential purpose:

> Section 25 . . . represents nothing more than a new application of a well-settled policy of ensuring public access to noncommercial programming. The section achieves this purpose by requiring DBS providers to reserve a small portion of their channel capacity for such programs as a condition of their being allowed to use a scarce public commodity.

Time Warner Entertainment Co., L.P. v. Federal Communications Commission, 93 F.3d 957, 976 (D.C. Cir. 1996). Consistent with its basic purpose, the Court upheld Section 335 as a reasonable means of providing access to diverse programming -- not as a means to guarantee an outlet for a particular class of speakers.

Notwithstanding the core purpose of the statute to provide access to non-commercial programming, certain publicly-funded broadcasters have asserted that Section 335(b)(3)[1] creates a narrow, exclusive class of programming suppliers whose programming alone can meet the public interest requirements of Section 335(b)(1). Encore believes that such an interpretation would undermine rather than foster access to non-commercial programming. Publicly-funded broadcasters are but a subset of the eligible programming suppliers, and the language of Section 335(b)(3) requires no such constraint.

Encore does not dispute that use of the word "shall" in a statute traditionally is mandatory. Indeed, Encore does not dispute the mandate in Section 335(b)(3). However, the statute does not state that this is the exclusive means to meet the reservation requirements or that all Section 335(b)(1) reserved channels must be utilized in this manner. Such an interpretation would undermine access to "non-commercial programming" by limiting the potential providers,

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[1] Section 335(b)(3) provides that:

> A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4) . . . .

thereby increasing the likelihood that this channel capacity could be used for commercial purposes under Section 335(b)(2).

Such a narrow view of the Section 335(b)(1) mandate -- limiting it to the exclusive domain of nonprofit programmers -- is also problematic because it would require, by extension, that all such reserved channels be filled with programming for which nonprofit programmers pay carriage fees under the "reasonable prices, terms, and conditions" established pursuant Section 335(b)(3) and (4). Even the public broadcasting entities cringe at the thought that they must pay for carriage of all programming satisfying the Section 335(b)(1) requirements, even at "discount" prices. As a practical matter, this channel capacity would likely be used instead for commercial purposes under Section 335(b)(2) because there will be too few takers at even a discounted price.

Moreover, such a narrow approach would be arbitrary in relying on for-profit or nonprofit status as a bright line test for eligible programming under Section 335(b)(1) when the clear intent was to create an obligation to present noncommercial educational programming. Indeed, such a bright line is not so bright at all because many of the programs carried on public broadcast stations are produced by for-profit entities (such as the News Hour with Jim Lehrer, which is produced by a for-profit affiliate of Encore's parent, Liberty Media Corporation), while much of the programming on WAM! is produced by nonprofit or governmental entities (e.g., Agency for Instructional Television and TV Ontario).[2] Although nonprofit status may be relevant in determining eligibility for access to some portion of the reserved channel capacity under the price limitations of Sections 335(b)(3) and (4), nonprofit or for-profit status would be an arbitrary standard for determining eligible noncommercial educational programming to meet the core requirements of Section 335(b)(1).

The imprecise blending of these two concepts in Section 335 -- that of noncommercial educational programming with nonprofit status -- is perhaps a function of the era in which the statute was written. At the time the 1992 Cable Act was drafted, the only program providers presenting substantial amounts of noncommercial educational programming were the types of entities included by name in Sections 335(b)(3) and (5). WAM! -- the only full-time noncommercial children's educational network -- was not launched until 1994. Nonetheless, its mission is fully consistent with what Congress intended in drafting Section 335(b)(1), i.e. to present children's educational programming without the "taint" of commercialization.

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[2] Indeed, certain nonprofit program suppliers, such as Children's Television Workshop (which is not presently providing a full channel of educational programming but reportedly has been negotiating with for-profit entities to form a joint venture to do so), have suggested that any joint venture between nonprofit and for-profit entities be deemed to be in compliance with Section 335(b)(3). Conceptually, there is no meaningful difference between such a proposal and a service like WAM!, for which a substantial amount of the programming is produced by nonprofit or government entities, but the network itself is owned by a for-profit company.

Notwithstanding the directive in Section 335(b)(3) that DBS operators "shall meet" the reservation requirements by making channel capacity available to "national educational programming suppliers," the statute does not foreclose the Commission from exercising its discretion to make such channels available for non-commercial educational programming provided by others. In *Ute Indian Tribe v. Hodel*, 673 F. Supp. 619, 621-22 (D.D.C. 1987), the court held that a statute's use of the word "shall" is not always mandatory and does not preclude other alternatives. In *Ute*, the court ruled that the Secretary of the Interior had discretionary authority to decline to disburse trust funds notwithstanding the statute's command that the Secretary disburse such funds upon request. *Id.* at 621. In its ruling, the court determined that the Secretary could consider the overall framework of the statute and its fiduciary duty to administer the trust fund and exercise discretion in declining to disburse funds from the trust. *Id.* at 622.

Encore believes that the Commission mandate in Section 335(b)(1) cannot be harmonized with Section 335(b)(3) unless it adopts rules that permit all providers of non-commercial educational programming to meet the public interest programming requirements of Section 335(b)(1). If Congress had intended to limit the eligible pool of qualified programming under Section 335(b)(1), it would have used a narrower term or specified the sources in Section 335(b)(1).

II. WAM! Qualifies as a "National Educational Programming Supplier" Under Section 335(b)(5)(B).

Even if Section 335(b)(3) were the exclusive means to satisfy the channel reservation requirements of Section 335, the term "national educational programming supplier" is defined to "include[ ] any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions." 47 U.S.C. § 335(b)(5)(B). As a matter of statutory construction, use of the word "include" is "not a finite word of limitation," but rather permits the conclusion that other items or entities not specifically enumerated may fall within the defined term. *Federal Election Commission v. Massachusetts Citizens for Life*, 769 F.2d 13, 17 (1st Cir. 1985), aff'd, 479 U.S. 238 (1986); 2A N. Singer, *Sutherland Statutes and Statutory Construction* 152 (5th ed. 1992). Indeed, one court held that the term "corporation" included in a definition of entities eligible to file petitions under the U.S. Bankruptcy Code could be construed and extended to include a labor union. *Highway & City Freight Drivers, Dockmen and Helpers v. Gordon Transports, Inc.*, 576 F.2d 1285, 1289 (8th Cir.), *cert. denied*, 439 U.S. 1002 (1978). The court further noted that the Bankruptcy Code definition used

> the word "includes" when setting out the types of organizations that come within the definition rather than the word "means." When a statute is phrased in this manner, the fact that the statute does not specifically mention a particular entity

> (in this case labor unions) *does not imply that the entity falls outside of the definition.*

Id. (citations omitted) (emphasis added).

It is a well-established principle of statutory construction that use of the term "includes" is not a term of limitation and should not limit the class of entities eligible under Section 335(b)(5)(B) as urged by certain publicly-funded broadcasters. If the words comprising the phrase "national educational programming supplier" in the statutory definition are given their common and ordinary meanings, WAM! clearly qualifies.[3] WAM! is the only full-time, completely commercial-free network dedicated to educating and instructing by engaging the interests and needs of an underserved 8 to 16 year old audience. As noted above, entities such as WAM! did not exist at the time Congress passed the 1992 Cable Act, but entities meeting the plain and ordinary meaning of the term "national educational programming supplier" should clearly be qualified as such by the Commission. Accordingly, the Commission should base its decision to include for-profit educational programming providers in the definition found in Section 335(b)(5)(B) based on the plain and common meaning of the term itself.

Finally, adoption of a narrow definition of "national educational programming supplier" that excludes otherwise-qualified educational programming may cause DBS operators to revisit the First Amendment issues raised in *Time Warner*. Precluding for-profit providers of otherwise qualified programming from participating in the reserved channels raises an issue as to whether the *operation and implementation* of Section 335 impermissibly infringe upon the First Amendment rights of DBS operators. Precluding for-profit suppliers of high quality non-commercial educational programming such as WAM! from qualifying under Section 335 will decrease the amount of qualified educational programming available, a result not intended by Congress.

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[3] Although the legislative history for Section 335 is sparse, Congress clearly contemplated that "public telecommunications entities," which are listed as a "national educational programming supplier," could obtain programming "furnished. . . by independent production services." S. Rep. No. 102-92, 102d Cong. 1st Sess. 92 (1991). Further, a *for-profit*, private educational institution also would qualify as a national educational programming supplier under Section 335(b)(5)(B) in addition to publicly-funded educational institutions. Again, there is nothing in the plain meaning of Section 335(b)(5)(B) to preclude for-profit institutions from qualifying, and such interpretation is consistent with the meager legislative history of Section 335 and the listed suppliers in Section 335(b)(5)(B).

In short, Encore respectfully submits that the statute authorizes the Commission to adopt rules in this proceeding that would allow: (1) WAM! and other private entities to provide "noncommercial programming of an educational or informational nature" on at least a portion of the channel capacity reserved under Section 335(b)(1); and (2) WAM! and other private entities to qualify as "national educational programming suppliers" under Section 335(b)(5)(B). By doing so, the Commission's rules will serve the core purpose of Section 335 -- to ensure that quality non-commercial programming will remain available to the American public.

Very truly yours,

/s/

Robert L. Hoegle
Counsel for Encore Media Group LLC

RLH:msd
cc: Chairman Reed Hundt
Commissioner Susan Ness
Commissioner James Quello
Commissioner Rachelle B. Chong
Secretary, for Submission in MM Docket No. 93-25

Exhibit C

Exhibit C

EXHIBIT C

Commercial Free -- The Touchstone of Noncommercial Programming

Encore Media Group ("EMG") believes the requirement in Section 25(b) of the 1992 Cable Act, 47 U.S.C. § 335(b), that channel capacity be reserved for "noncommercial programming of an educational or informational nature" does not by its terms require that such noncommercial programming be provided exclusively by nonprofit entities. The issue has not arisen previously because historically (i.e., before WAM! was launched in 1994), nearly all networks airing noncommercial educational programming were structured as nonprofits. However, Congress used the term "noncommercial" not to refer to the nonprofit nature of the entity providing the programming, but rather to the requirement that to programming be provided "without commercial advertising."

Congress's primary focus in enacting the DBS educational programming requirements was that such educational programming be presented without any commercials, so that the educational program suppliers, and in turn the DBS operators, would not be beholden to "dual masters," that is, both to educating children and to achieving higher ratings so that ads can be sold at higher rates. Throughout debate over the Children's Television Act of 1990, 47 U.S.C. §§ 303a, 303b, and 394, Congressional hearings abounded with testimony regarding the negative impact of advertising on children's educational and entertainment programming.

The repeated Congressional refrain has highlighted many well-meaning educational and informational programming ideas and programs that would well serve educational programming needs, but these ideas have not been able to attract sponsorship necessary for commercial broadcasting. The lack of commercial sponsorship response, in turn, chills the efforts to develop more such responsive children's programming. By contrast, the public or private character of the producing entity has no real bearing on the educational quality of that programming, except perhaps in a positive way due to the greater financial resources that may be available to a private corporation. Moreover, the private sector, unencumbered by concerns of funding limitations, can be highly flexible in meeting needs of specific targeted groups.

The Children's Television Act and the Commission's rules which implement that Act use the term "commercial" interchangeably with the concept of advertising -- not with the concept of profit. Thus throughout the Commission's Report and Order and the Memorandum Opinion and Order on Reconsideration,[1] the Commission specifically uses the term "commercial" to refer to advertising, not to nonprofit or for profit status of the program provider, specifically using the terms commercial limits, commercial matter, and commercialization in developing the rules that deal with commercial advertising in children's programming. While eligibility for a license to operate a

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[1] See In the Matter of Policies and Rules Concerning Children's Television Programming and Revision of Programming and Commercialization Policies, Report and Order, MM Dkts. 90-570, 83-670, 6 FCC Rcd 2111 (rel. April 12, 1991) and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 5093 (rel. Aug. 26, 1991).

"noncommercial educational TV stations" as used in Section 73.621 of the Commission's rules is specifically limited to "nonprofit educational institutions" for the purpose, *inter alia*, of furnishing "a nonprofit and noncommercial television broadcast service" (emphasis added), this definition itself would be meaningless and redundant if "noncommercial" were completely synonymous with "nonprofit." See 47 C.F.R. §§ 73.621. Other than this arcane definition of "noncommercial educational TV stations" (which of course are by no means limited to educational programming), the Commission's rules, especially in the areas of children's programming and educational programming, pervasively use the terms "commercial" and "noncommercial" to refer exclusively to whether programming contains advertising. See, e.g., 47 C.F.R. §§ 73.670, 73.671, 76.225. In the Cable Act of 1992, enacted a mere two years after the Children's Television Act of 1990, Congress referred in Section 335(b)(1) specifically to reserving channel capacity for "noncommercial programming of an educational or informational nature," and not to either programmers or noncommercial entities themselves. (Emphasis added). It is only later, in Section 335(b)(4)(B), that the statute separately refers to the types of "national educational programming suppliers" that may be eligible for the cost limitation protections of Section 335(b)(3), and even there, nonprofit status is not a specific requirement. (Emphasis added). To the contrary, included among the types of group described as examples of such entities in Section 335(b)(4)(B) is at least one type of for profit entity (private educational institutions). However, it is a substantial leap to assume that by using the term "noncommercial programming of an educational or informational nature" Congress really meant "nonprofit entities" instead.

Nor does the decision of the Court of Appeals for the D.C. Circuit[2] affirming at this stage the constitutionality of Section 335(b) suggest that the statute used the term "noncommercial programming" as being exclusive to nonprofit entities. That decision did not focus on the nature of the entities eligible to provide the Section 335(b)-responsive programming, but rather focused specifically on the types of noncommercial programming that would satisfy the requirement:

> Section 25, then, represents nothing more than a new application of a well-settled government policy of ensuring public access to noncommercial programming. The section achieves this purpose by requiring DBS providers to reserve a small portion of their channel capacity for such programs as a condition of their being allowed to use a scarce public commodity.

Time Warner, 93 F.3d at 976 (emphasis added). While historically there may have been an imprecise confusion of "noncommercial" with "nonprofit," certainly the Time Warner decision does not justify perpetuating such confusion, and nothing in that decision suggests that its affirmation of Section 335(b) was based on the nonprofit status of the educational program supplier rather than the lack of commercials in the educational programs.

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[2] Time Warner Entertainment Co., L.P. v FCC, 93 F.3d 957 (D.C. Cir. 1996).

Exhibit D

WAM! EDUCATIONAL Line-Up

Monday - Friday

Time	Program
03:00	*We Are the Children (np)*
03:30	*Global Family (np)*
04:00	*Field Trip (np)*
04:30	So You Want to Be
05:00	Mark's Web World
05:30	*Futures (np)*
05:45	*Interactions (np)*
06:00	*Eddie Files (np)*
06:30	Mathematical Eye
07:00	Pumped
07:30	Scratch
08:00	*Music Factory (np)*
08:30	Art Attack
09:00	*We Are the Children (np)*
09:30	*Global Family (np)*
10:00	*Field Trip (np)*
10:30	So You Want to Be
11:00	Mark's Web World
11:30	*Futures (np)*
11:45	*Interactions (np)*
12:00	*Eddie Files (np)*
12:30	Mathematical Eye
01:00	Scientific Eye
01:30	How 2
02:00	*Music Factory (np)*
02:30	Art Attack

np = program source non-profit agency

11/4/98

WAM! Education Programs Produced by Non-Profit Agency

Title	# Programs	# of Hours	Grade	Subject
Global Family	60	30	E, M	Social Studies
Green Earth Club	23	6	E	Social Studies
We Are The Children	36	18	E	Social Studies
Field Trip	27	13	E, M	General
Futures	24	6	E, M, H	Career
Interactions	12	3	E, M, H	Math
Math...Who Needs It?	1	1	E, M, H	Math
Eddie Files	16	13	E, M, H	Science
Music Factory	10	5	E	Music
Musical Encounter	42	21	E	Music
TOTALS	251	116		

Grade Legend: E=Elementary, M=Middle, H=High